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THOUGHTS
ON THE
ENGLISH GOVERNMENT;
LETTER THE FOURTH.

Howell 103. e. 52

THOUGHTS



THE ENGLISH CONSULATE GENERAL

Thoughts on the English Government.

ADDRESSED TO THE
QUIET GOOD SENSE
OF THE
PEOPLE OF ENGLAND.
IN A SERIES OF LETTERS.

LETTER THE FOURTH.

*Blackstone's Commentaries deficient in Constitutional Information—
The probable Reasons of the Commentator's Deficiency in this Branch
of Knowledge—Certain Speeches criticised for Unconstitutional Ex-
pressions—Parliamentary Phrases—Examination of the first seven
Chapters of B's. Commentaries—Their Arrangement—The King is
not a Magistrate—Ours is not a Constitution of Ballances and Checks—
A Paragraph of B's. Text compared with an amended One—The
word Prerogative does not properly signify the Royal Authority—
POSTSCRIPT—The Critical Review censured for Falsification.*

L O N D O N.

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ADDRESS TO THE

QUIET GOOD SEAM

PEOPLE OF MICHIGAN

IN A SERIES OF LETTERS

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TO THE
QUIET GOOD SENSE
OF THE
PEOPLE OF ENGLAND.

WHILE Mr. Wooddeson is reconciling himself to the defeat, he has suffered, in his ill-advised attempt to discredit those Truths, which he was unable to shake by Argument; I shall proceed in examining the Errors of Vinerianism, which have misled many more, than professors, and their pupils.

It is really true, as I have before declared,^a that I had written my first, and the greater part of my second letter, without

^a Letter II, page 181,

remembering, (for I had certainly once known) the scheme sketched out by Blackstone, upon the very points I had to discuss. That scheme is, as I think, the origin of all the misconception, and prejudice, now prevailing with regard to the form, and nature of our Constitution; Blackstone's Commentaries are in the hands of every one, who reads at all; what is there laid down, gets established, as authentic, and is afterwards made the test, for trying every position, and reasoning upon the same subject.

It is much to be lamented, that a work so popular, so generally read, and of such real merit, should be blemished with false notions, on points of great moment; and it may appear strange, that a person who has succeeded so well in detailing the law of the land, in every other branch of it, should fail in what relates to the nature and form of our Government, upon which other persons of very ordinary attainments, and of none at all in the law, think themselves, so well qualified to discourse. But, the truth is, that the author of the Commentaries, at the time he drew up that Institutional work, had not the experience, or knowledge, that alone could enable him to treat this part of his subject, with

with the same intelligence, he had the others. The law of private rights, and the criminal code, are in daily practice, and under constant debate in our courts; they thence obtain a place among adjudged cases, and so in fact they constitute the body of all our reports. A mere book-lawyer may there inform himself very competently of the whole system of our law, so far; and deliver it, as Blackstone has done, with precision for the information of others. But these report books contain nothing, except by some rare chance, on the operations, and nature of the Supreme Government, which is commonly called the Constitution. Such information must be sought elsewhere; it is to be found only in books, that are not properly law books; and as the contents of them are not necessary for the ordinary demands, either of Westminster Hall, or the Circuit, they are not in the regular course of study; if looked into at all, it is only to consult on occasions, and very rarely with a view of obtaining knowledge systematically, by considering the whole, and every part of any subject. Indeed the books, that are to give any information, at all, upon the functions of the Supreme Power, are but few; and those we have, are very jejune, and unsatis-

factory. The principal of them relate to proceedings in Parliament; Those, that can give any light upon the conduct of the Executive Departments of the Supreme Power, are hardly to be named; there is certainly none of any eminence. A student, therefore, who is in the habit of thinking, there is no law in the land, but what he finds in his law-library; and who has not been undeceived in this prepossession by any experience, from actual employment, in the details of the Executive Power (which is likely enough to be the state of mind of an Academic Lawyer, as Blackstone was, when he planned, and penned the greater part of his Commentaries) may naturally be induced to lay it down, as Blackstone has, that the Executive Government is carried on "by the King *alone*;" meaning that the persons and offices, where the detail of that Power is lodged, are not so precisely defined by the Constitution, as for them to be objects of legal consideration, like the Parliament; and that it is indifferent, whether such duties are discharged in one particular way, or in another. It was from such defect of knowledge and experience, that Blackstone was led into so loose a declaration; and it is, no doubt, from a like cause, that many persons unite in the same senti-

sentiment, which leads them to unworthy notions of the Executive part of our Government, as if it was something foreign, or hostile; and, accordingly, they never consider it, but with jealousy, or contempt. Hence it is laid down by our Commentator, as will be seen presently, that the limiting of the Prerogative is an object, ever to be pursued most earnestly by all Englishmen; as if it were a natural evil, instead of the natural protection devised by the Constitution for our lives, and properties.

It is not, however, alone to book-lawyers, and unexperienced Academics, that such false notions are confined; we see them also in some persons who are well acquainted with the important functions of Government; and in others who actually hold offices in various departments of the Executive power. The latter must, in the discharge of their duty, have been strongly impressed with another manner of thinking than that suggested by the Commentator; and yet they condescend familiarly to use a language fit only to express his misconceptions. Blackstone says, the supreme Legislative power consists of King, Lords, and Commons; which, from the mode of expression, sounds like an authority exercised in
a sort

a sort of co-partnership, share and share alike. During the debates on the Regency, and recently in the debates on the proposed Union with Ireland, these three parties have been termed "three Branches," and "three Estates," as if they were co-equal: some persons have gone further and termed the King "the third Estate;" so that having first brought him down to be *unus inter alios*; they do not allow him to be *primus*, but make him *Postremus inter pares*. The King is termed in the printed speeches of some great men, "the third Estate;" another speaks of the Parliament as consisting of "three Estates" "or Branches;" another talks of "the Branches of the Legislature," including the King; he goes further, and supposes an "Allegiance of the people to Parliament;" and, that they have a right to be "governed by their Parliaments, and by no other human means." All these are improprieties both in language, and doctrine, and ought not to come from persons of high rank, and character; they set examples of the worst sort, because they tend to lessen the King in the estimation of his subjects. It is certainly known to all these gentlemen, that the King, so far from being the third and last of three Estates, is himself the "head of the three Estates,"

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of which the house, where they speak, is the third, and last. The person above alluded to, must know, that Allegiance is not due to parliament at all, but to the King alone, to whom he himself has often sworn Allegiance; and that we are not governed by parliament, but by the King; who, indeed, may properly be said to govern by parliament, as well as by other means, placed in his hands by the Constitution.

These gentlemen are all professionally bred, and they ought to be models of correctness; I should be more pleased with an occasion to applaud, than to censure what comes from persons of their station, more especially from themselves, for whom I entertain a very high respect; and I am glad that one of them, has given me an opportunity of shewing, that such is my real wish; for I am able to adduce a passage from his speech, that I must applaud, as quite conformable to my conception of Truth; it is as follows. “ The Legislature of the Empire may, in my opinion, in one point of view, and that, perhaps, the most enlarged, and soundest, be considered as one great political machine, consisting of one and the same Supreme Head, both Executive
“ and

" and Legislative, to which are attached and
 " linked two separate members; while each
 " of those two is subdivided again into two
 " analogous parts; the one, the Lords and
 " Commons of Great Britain, empowered to
 " prepare for the Sovereign's deliberation,
 " sanction, or rejection, whatever may seem
 " necessary for Great Britain, and for the
 " Empire at large; the other, the Lords and
 " Commons of Ireland, possessing &c. —
 " the same power, as to the Kingdom of Ire-
 " land." Here we have a just image of the
 King presiding over the Legislatures of both
 Countries; and in this I allow, some amends
 are made for the preceding loose expressions
 of this speaker. He will permit me, however,
 just to notice (what, perhaps, more reflects
 on the supposed taste of his hearers, than
 his own) the ceremony, with which, he
 thought himself bound to bespeak a hearing
 for this piece of Truth, while there prevails
 an established toleration for the improper use
 of " three Branches," " three Estates," and
 " Third Estate," some of which phrases Him-
 self, and all of which Others had been using on
 the same occasion, without any apology at all.

I know these ill applied phrases will not be
 defended even by those, who use them; but
 they

they will be excused, perhaps, as a vulgar parlance, a sort of parliamentary slip slop, that has obtained from the necessity, persons are under, to speak of the Sovereign, in any circumlocution, or description, rather than by name. But surely, our language is not so barren, as to furnish nothing of this sort, that may be consistent both with Law, and propriety. I never shall reconcile myself to such gross mistakes, in the printed speeches of members of parliament. If they chuse to wave the privilege of speakers, and come before the public as writers, they are *publici juris*; and I shall, I promise them, set myself to criticise their performances, as often as they err in these constitutional points; of others I shall take no cognizance. On future occasions, I shall 'name them,' which I have refrained from doing now, in hope, they will take warning, and mend. I owe a little to some of these gentlemen, who criticised my writings, in the last House of Commons; and I shall pay it in kind, as an author should. Neither slip slop, vulgar parlance, stupidity, ignorance, or folly, were admitted as excuses for me; they have laid down their own rule, to judge by the very letter; by that they pronounced me to be a Libeller, within doors; and they must be content, if by the same

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measure

measure, I prove them to be "plain fools," without. This comes of calling names ; but let us, nevertheless, hope something better from this captious warfare of words ; such a watch upon their writings, may put them on their guard against this loose manner of speaking, so unworthy of lawyers, and of Statesmen. Some good may thus be derived from that singular proceeding ; for though it has not reformed me, it may yet reform the parties themselves ; this too will be within the equity of their original design ; for the advantage of it will still redound to their own benefit ; not indeed to that of the House, which is defunct and past cure ; but of the individuals, who composed it, and who will not be the worse for a little correction, even from me.

To be serious, I am confident, that these improprieties of language, and want of precision in opinions, will be mended in all of us, as soon as they are pointed out. The reigning mistakes about the form of the Constitution, are not the result of study and research ; but they have obtained for want of both. A few objections, and a little reflection will open the eyes of any impartial person, who has hitherto been misled. I have, indeed, been told,

told, that people have made up their minds on this subject; but I am persuaded they have not; the majority are, I believe, in a state of indifference about it; for though they have taken up with the current opinion, rather than have no opinion at all; they are prepared to embrace truth, when it shall be presented. They are in a state of Error; not of Heresy, as Mr. W. is; and, I will venture to say, there is hardly a man, who treads the pavement of Westminster Hall, if he had set down purposely to controvert my second Letter, but would have concluded his vain attempt, by uniting in my opinions, and rejecting every absurdity, so strenuously maintained by Mr. W. I speak this from observations I have recently made; and I begin to think, the apprehensions expressed in my third Letter, of lawyers, or others, being obstinately prepossessed against my opinions, were upon the whole, not well founded.

The persons who are alone likely to oppose themselves to truth, are Those, who like Mr. W. have committed themselves by their writings; and, like him, prefer the false honor of defending an error, to the true one of retracting it: or Those, who have a dislike to Kingly Government, and truly think, their

partialities to republicanism are favored by his hypothesis of co-ordination. Such are the only persons, who will take part with Mr. W. and will make a cry, like Demetrius and the Craftsmen for Diana of the Ephesians. But, I am persuaded, the Golden Calf of Vinerianism, the spurious idol of King, Lords and Commons, (the *tricorporis ora Diana*, the statue that fell down from Jupiter,) will fall down even to the earth, never to be reared again; and I advise him, and his followers to cease their clamour, and attend to "The Quiet Good Sense," of the Town Clerk, upon that occasion, without making further disturbance, "there being no cause whereby they can give an account of this" matter.^a

However obvious truth may appear to be, it must still be pointed out, before it can obtain partisans; if this is neglected, and falsehood is more sedulously taught, the latter will have the majority for adherents. The lovers of truth must, therefore, examine and bring to trial the errors of the time; and having contrasted them with the truths, whose place they usurp, they should set plainly before the world the reality, which ought to be

^a Acts, chap. 19. v. 40.

regarded, and followed. If this is done, with ordinary application, there is no doubt of being fairly heard, and as little of being successful; provided the times are free from those heats, that are ever unpropitious to forming a right judgement of any thing, more especially in Politics.

I mean to perform such an experiment, as this, upon those parts of Blackstone's Commentaries, which I think less precise, and sound, than is becoming the general character of his valuable work. To this attempt I should premise, what I have before declared,^a that I hold the Commentaries in very high estimation; I have a feeling for the name of this Great Lawyer, and Writer, which is compounded of gratitude, for assistance in my first studies; and conviction of the real value of his labors, since I have been able to judge for myself. I believe it to be, the best introduction, there ever was, to any system of law; he has extended a knowledge of the law beyond the professors of it, making jurisprudence a part of the literature of the Country, and, therefore, within the circle of every gentleman's studies. Since the publication of Blackstone's Commentaries, every Englishman who reads, feels a temptation to acquire

^a Letter III. page 58.

a general idea of the law, he lives under; which too he now likes the better, since he is not wholly without some knowledge of its principles, and application. What I have regretted in this instructive work, is, that the Constitutional part is not executed so well as the professional one; and that, while the lawyer is grounded in sound principles, the gentleman is in danger of being led astray, by conceit, and sophistication.

I think it would be a very useful service to the Country, if some one would undertake to recast, and fashion to the true form, the first seven Chapters of his first Volume; the matter should have a different turn given to it in many places, and there should be additions of such particulars, as the Commentator does not seem to have sufficiently regarded, or even understood. To explain what I mean, I will trouble the reader with a short disquisition upon some passages in these chapters, and endeavour to suggest the sort of Reform, which, according to my opinion, would be a considerable improvement in this national work. While we are taking this liberty with an author of established reputation, I must intreat the reader not to place himself in a situation, too disadvantageous, and disheartening

ening. It is not the Venerable Judge, we have been used to see on the Bench, whom we are about to criticise and censure, but Mr. Blackstone the Lecturer at Oxford ; who had fewer years over his head than ourselves, when he wrote his Commentaries ; and did not, perhaps, possess the knowledge, certainly not the experience of many of us, who are too much disposed, from habit, to admit for authorities certain established names, that, upon examination, appear to have less pretensions than ourselves.

To begin with his first Chapter, which he intitles “ Of the Absolute rights of Individuals.”

I intirely approve of his opening a Treatise on the Laws of England, with a short, but impressive Statement of The Privileges, and Liberties, which are the birth-right of every Englishman. As these are the great end of our Law, and of our Government, they are intitled to the first notice ; the Student too having thus seen the Stake he is to maintain, will perhaps, the more readily undertake the Study of those Institutions, which are to secure him in the possession of it.

Having

Having stated and explained, the three great and primary rights of, personal security, personal liberty, and private property, the Commentator comes to what he calls "auxiliary subordinate rights, which serve principally as barriers to protect and maintain inviolate, the three great, and primary rights." These auxiliary subordinate rights are thus enumerated. First, the Parliament. Second, the limitation of the King's Prerogative. Third, right of action in the Courts. Fourth, right of petitioning. Fifth, right of having arms for defence. Upon the nature of these, as reasoned upon by the Commentator, I shall make some short observations.

However I may agree in considering the parliament as auxiliary towards the maintaining of our rights (which it most certainly is, and very materially so) I should not have placed it first; nor does this arrangement seem to accord even with the Commentator's own distribution: for if the right of petitioning should be placed as the fourth article, upon what principle was it, that he placed the parliament first, which is one of the objects of such petitioning; and why should the Prerogative, which is the other object of petitioning, not be mentioned at all, as an auxiliary

liary right; but only the *limitation* of the prerogative? Again, it is surely, a very singular method, in an Institutional Work, to acquaint the uninformed reader, that the indefinite limitation of a certain Power in the State, is one of his best securities, before any account is given of the extent and nature of that Power, so as to enable him to form some sort of judgement himself. I can imagine, in a Treatise of Theology, it might be thought not at all abrupt, but sufficiently progressional, to lay down at the outset, these two fundamental points, (as Blackstone has here the Parliament, and the limitation of the Prerogative) First, to love God; Secondly, to abhor the Devil, and all his works; because we have, from our earliest days, impressions respecting that Evil Spirit, which prepare us for such a precept, without entering into any previous detail of his nature and qualities. But the Royal Authority, is one of those moral and political inventions, which contains such a complication of ideas, that we are not prepared, upon the mere naming of it, to assent, that its limitation and restraint are the only, or primary considerations it deserves.

Thus far, as to mere method, and that duty, which an Author owes to his Readers. Let

us now see, what he has done, for the Constitution of the realm, and what influence this is likely to have on the patriot sentiments of Englishmen. He has here, in a few sentences, taught us, that the Parliament is a positive good; but that the Royal Authority is a positive evil, and is only to be rendered a good, by its diminution, and by a continual watch upon it, which must be kept by every true Englishman. We see, then, that in the Vinerian dispensation, the Parliament is the good spirit, and the King the evil one. It is only during six or seven months, that the former has its ascendancy; in this sunshine, we enjoy the glorious Constitution allotted to us by our Commentator; during the rest of the year, we are to wage unceasing war with the Prerogative of the Crown; and by such probation militant, we are to qualify ourselves for the blessings, we shall participate during a certain portion of the following year. Here is a prospect! here is a System, for young lawyers, and for gentlemen of rank, and fortune, who are to become the Counsellors and Advisers of the King, in the exercise of his Prerogative!

Such principles as these, are grossly incorrect in theory, and extremely detrimental in
their

their consequences. For it is irrefragably true in principle, and every man sees, and recognises it in practice, that the Royal Authority is the very *prima materies*, upon which the Constitution of the Government depends, first for the substance of its existence, and then for the movement of its members; it is, in the words of Sir Michael Foster; "The fountain from whence the blessings of Government, Liberty, Peace, and Plenty flow."^a That good man, and sound lawyer, would not have begun an Elementary Treatise of the Law, by intimating to the Student, that the Houses of Parliament stood before the King, in the scale of public authority; and that the King's authority was only to be regarded for the purpose of limiting it. He would not have conveyed an impression, that the dead letter of a transient Assembly was a better protection to us, than the living spirit of the King, who first gives to such dead letter its animation, and then directs and applies it to all the respective cases, for which it was designed; from which protecting superintendence, He or his officers never cease, no not for an hour. Any thing so incoherent, so preposterous, I should not have

^a See Letter II. page 35.

thought, could enter the head of any man, and be published formally to the world, but where, there was either a very shallow intellect, or some very deep design; neither of which do I impute to the respectable Commentator; who, I believe, has nothing more to answer for, than weakly conforming to certain vulgar notions, which in his situation, he ought rather to have corrected, than sanctioned by such adoption.

The Commentator might very well have escaped this censure, and yet adhered to his method of placing the Parliament first; in this manner. First, the Constitution, powers, and privileges of Parliament. Second, the Constitution, powers, and prerogatives of the Royal authority; this latter head would, of course, include in it, all that was to be said on the limitation of such power; and, he would then have avoided the absurdity of stating as a positive thing, an entity in the law, what is a mere negative; for such is, after all, the "*Limitation* of the King's authority."

If I had, had to state these five auxiliary rights, I should have placed them, I think, in a different order; but in such a one, as appears to me a little more consequent, and somewhat
more

more informing. For example. First, the right of having arms for personal defence, against immediate violence. Secondly, the right of redress by process of law in the King's Courts. Thirdly, the right of petition, either to the King, or his Parliament. Fourthly, the constitution, powers, and privileges of Parliament. Fifthly the constitution, powers and prerogative of the Royal authority. In this order, I think, a sort of gradation is preserved. First, the sort of defence, which more nearly approaches to what prevailed in the state (by some supposed to be) anterior to positive Government; and which is still necessary, where the ordinary protection of Government is too tardy, or too remote. The second is the ordinary means afforded by the Government itself for the common redress of every individual. If that is deficient, the third step is, to apply by petition to the Supreme Power in the State, for such extraordinary remedy, as the nature of some new case requires; this may be to the King, either in Parliament, or out of it. If in Parliament, the petition should properly, as I conceive, be addressed not to the King, but to the House of Commons; for the Commons themselves are, by their constitution, in the nature of petitioners, and none others are known to the King in Parliament; They stand therefore

fore between the King and his people, and become naturally the objects of petition themselves. I should therefore place fourthly, the constitution, powers, and privileges of Parliament; and then, I should place the King in the fifth and last place, because he is often petitioned to dissolve the very Parliament itself, and therefore is truly the dernier resort in matters of redress. The King is daily petitioned also in his Privy Council, and elsewhere; for relief, in various instances.

Such is the situation in which I should place the Royal Authority, if I were tracing the gradations of redress, from the first and ordinary, up to the extraordinary and highest relief. Upon the same principle of real dependence, and origination, I should, in a synthetical discourse on our Constitution, place, first what concerned *The King's person*, and then go on to his *Government*, under which would come the two Houses of Parliament, as a part, and very principal part of it. *The King's Person and Government*, is the language of our Statute-book; and it points out, from the highest authority, what are the primary objects in our Constitution, and where we should fix our first attention. I wish theoreticál writers would adhere to the true Elements, and not
torture

torture their invention, to form relations, and combinations, which have no warrant, but their own fancies; and which must afterwards be unlearnt, before their readers can return to a just way of thinking.

The application of the term "Magistrate," to the person of the King, is among those fancies of theoretical writers, that contribute to mislead the judgement. The supreme Magistrate is so spoken of in Chap. 2, and in his 7th Chap. he tells us "The King of England is not only the Chief, but properly the sole Magistrate of the Nation." The calling him the "sole Magistrate" is not open to the same criticism, that I ventured to make upon his being said to exercise the executive authority "alone;" for there, "alone," being put in opposition to his conjunction with the Parliament in Legislation, it conveyed an idea of the King acting literally alone in matters of the Executive Government; but here, "sole" being put in correlation with "subordinate" Magistrates, implies, that the latter are his appointees, and substitutes; and whatever power they hold, is only in his name. Such a notion is correct, and I should approve it, if it was not vitiated by the word "Magistrate," which is inconsistent with the idea intended to be impressed; for

' Magi-

‘Magistrate’ implies subordination and appointment, which is not suitable with the supremacy of the King.

“Magistrate” is not a technical term in our Law; it is not properly the name of any known officer in the Constitution; though it has, of late days, crept into the Statute Book, and so grown into more established use.

It has been introduced partly by theoretical writers, and partly by persons, who speak without any theory at all. It is more frequently applied to Justices of the Peace, as an official appellation of better sound; some find it useful in discourse, to avoid circumlocution, or the repetition of the same word. Under such circumstances, I hold myself at liberty to examine the pretensions of this stranger, who comes to us from a foreign language. In common matters, “usage” may have all its influence to gain prescription for words; but where words are to pass for things, and those things are the first in rank, and consideration in our Constitution, I shall ever resist, “the fashion, the Law, and the arbitrary will, of usage.” This at least, is a piece of literary republicanism, which loose Critics should not be permitted to impose upon the King’s Subjects without some animadversion.

Look

Looking back to the same native source for "Magistrate" where I before looked for "Legislator," I find that the very essence of such office, and officer was, that there should be an appointment from some higher Authority. *Dicti sunt Magistratus, quibus res publica, a Populo, vel Principe commissa esset*, is the language of the Roman Law.^b

The Consuls, therefore, and Prætors were "Magistrates" under the Republic, being appointed by the people; and so were Prætors, and other Officers appointed by the Emperors; but a King of England, in whom resides the Supreme Power, is in the Construction of the Roman Law, in the situation of the *Populus* or *Princeps*, and therefore, is not himself a Magistrate, but possesses the Authority to appoint Magistrates. The Corsican Adventurer may be truly called the Chief Magistrate of France, because he is in theory, (though not in fact,) appointed by the people. The King of England, is not appointed either in theory, or in fact, by the people, or by any authority whatsoever, but his own exercised in Parliament.^c

^a Letter II. page 62 and 63.

^b Calvini Lexicon Juridicum in voce.

^c See Letter II. page 164.

I wish, therefore, the expression of "Chief Magistrate" was not applied to the King. It is undignified, considering that the term is applied also to Justices of the Peace, and others exercising authority under him; and it appears from the above inquiry, not to be applicable to his station, in the true sense of the word, in the language, and jurisprudence, from whence it has been borrowed.

In his second chapter, is laid down that division of our Government, into Legislative and Executive, which is the fundamental Error of Vinerianism, and which leads to all the mistakes made by its partisans, in speaking of the Supreme Power. Upon this grand heresy, I have said so much in my second Letter, particularly in pages 76, 77, 78; and again in page 181, in the note, that I need add very little upon it. I would only apprize the reader, that my objection to the mere terms, "Legislative and Executive" is principally directed, to the use made of them by Blackstone in his division of the *whole* Government into those two branches, considering the King, Lords, and Commons, as the Legislative, and the King alone as the Executive. But in another sense, expressing the *subordinate* functions, exercised under the King, I have not such objection to them, and
I have

I have frequently found a convenience in that usage of them through these writings. In this sense, I understand the Legislative as signifying the two houses, who advise the King in matters of Legislation; the Executive, as comprehending every other department in the state, under the King. When I speak, therefore, of the Legislative, I mean to be more precise than in the use of Executive; for I think by that term, I as plainly define what I mean, as when I say, The King's Treasury, the King's Admiralty, the King's Courts, the King's Privy Council, and the like; but these being parts of, and comprehended under the general term of, Executive Government, the word Executive is less precise than the other.

The principle, upon which Blackstone seems to found the necessity of this division of the Government, is equally complied with in my way of considering it, as in his own. For, if it is true, as he says, that where these two powers are united together, there can be no public liberty; such union of them in the person of the King, is cured of its destructive consequence, by their being exercised in the hands of separate bodies of persons, one the Legislative, the others the various departments of the Executive, as before discribed. Supposing, there-

fore, for a moment, that any speculative reasoning is to be permitted to give law to positive Institutions, long established, there was in this case, no need of such violence; for the fact was already consonant to his principle. The Commentator seems, therefore, to have little excuse, for taking this liberty with the Supreme Power, by breaking its Unity in the person of the King, and representing him as holding it only jointly with others, in matters of Legislation.

Let us now proceed from the error of imagining His Majesty to have a sole concern of his own in the Executive, and a joint concern (*pari gradu*, seemingly) with the two houses in the Legislative, to the speculations indulged by the Commentator, on the nature and conduct of this new fashioned Legislative, which he had thus fabricated. We have here an artificial piece of reasoning, that exceeds any thing else in his learned work; I mean, where he considers these three powers, as acting in mechanical opposition to one another, so, as to produce an effect combined out of their joint efforts, and resulting from the checks and balances of three contending Interests.

The first observation, that suggests itself upon
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the Author's reasoning, is this; that it proceeds upon a supposition of our Government having been framed at a known time, all at once, by persons who sat down by agreement and by authority, to perform this great work; and that the very reasoning, and principles laid down by the Commentator, were actually, in the minds of these sublime Artificers, to contemplate, and work by.

He first tells us, that it is highly necessary, (meaning, I suppose, that the above artificers saw this necessity, and provided accordingly) for preserving the balance of the Constitution, that the Executive power should be a branch, though not the whole, of the Legislature. He then tells us, that a union of the two would produce tyranny; which he exemplifies in the two houses assuming, during the Grand Rebellion, the powers of Legislation, exclusively of the Royal Authority; for they "soon after" assumed likewise the reins of administration. This is related in a manner, to support his hypothesis of a double government, namely, Legislative and Executive; as if the destruction of the latter, was only a gradual consequence from the violation of the former, and that it took place progressively, conformably with the inherent principles above supposed; whereas
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this destruction of the Executive, was effected *uno ictu*, with that of the Legislative; for the King is one single person, not two, as the Commentator would make us believe; and one stroke displaces him both from his Legislative and Executive Station and destroys at the same time all his authority. It was so in point of history; and the fact is against the supposition, however he may attempt to warp it by introducing the words “soon after.”

He goes on, “To hinder therefore any such encroachments, the King is himself a part of the parliament, and, as this is *the reason of his being so*, &c. &c.” That is, he would insinuate, the above sublime artificers dove-tailed him into the Parliament, for the sole purpose of keeping it all tight, in that particular. But *that* forsooth, being the reason “very properly therefore, the share of Legislation, which the Constitution has placed in the Crown, consists in the power of *rejecting*, rather than *resolving*, this being sufficient to answer the end proposed.” Proposed, no doubt, by the Constitution-workmen above alluded to. “For we may apply to the royal negative, in this instance, what Cicero observes of the negative of the Roman Tribunes, that the Crown has not any power of doing wrong,
“but

" but merely of preventing wrong from being done." I have heard it said, that nothing is so unlike as a simile; I am sure nothing is so likely to mislead; for a bad simile is generally better remembered, than a good reason; and I dare say, some of the readers of Blackstone see clearly, that the *veto* of the Roman Tribunes, and of the King of England, are exactly the same thing; and of course, that the Houses of Parliament are at the head of the State, in the same manner as the Roman Senate.

A little reflection, however, must soon satisfy them, that the mere *vis inertiae* of preventing wrong being done, will not help on the affairs of a Government; and that the first mover in ours must have a more active as well as more dignified station. I have elsewhere hazarded a comparison from the Roman Government, which I hope, has more of truth in it. In my second Letter ^a I have imagined the King's Majesty to exercise his authority in making Laws, precisely, as the Roman People did; and that this was for the same reason in both cases exercised by a mere assent, or dissent. As the Supreme, and Sovereign power (expressed by the term "*Majestas*," in both Countries) resided in the

a Pages 63 and 64.

same persons, who so made the Law; I thought the coincidence complete; and this illustration a perfect one. But the Commentator's comparison of the King with the Tribunitian authority, appears to me wholly exceptionable; it implies, that the King has no part in assenting to any good measure whatsoever, whereas, by the Constitution, he really ordains every one of them.

The Commentator goes on, in the following words. "And herein, indeed, consists, the true excellence of the English Government, that all the parts of it form a mutual check upon each other. In the Legislature the people are a check upon the nobility, and the nobility a check upon the people, by the mutual privilege of rejecting what the other has resolved; while the King is a check upon both, which preserves the Executive Power from encroachments." And he goes on to say, that the Executive is again checked by the privilege of the Commons to impeach its ministers. Although we cannot doubt, what is here meant, yet the principle of checks, upon which it is explained, does not seem very suitable either to the truth, or the dignity of the subject. This minute device, surely, is more applicable to subordinate departments, where much detail is managed, and the subject
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consists of number, weight, or measure: but to suppose a CONSTITUTIONAL Lawyer going his round, with a pen behind his ear, among controllers, supervisors, and clerks, to note the occasional increments and decrements of power, and calculate the movements arising from the contention of these opposing interests in the great Council of the Kingdom, — the assembled wisdom of the nation, — is, surely, an unworthy contemplation, to say the least of it.

But what is to be said of a Theory, that has no application in practice? for this notion of balances, and checks, and opposing interests has no existence, except in the imagination; and never exhibits itself in the real operations of the parliament. What can be said of the King's power of rejecting bills, which has not been exercised within the last century? and what will be said of it by Those, who deny his having any such power? Their notion of the parliament must be different from this of checks, and balances. Again, the manner of conducting the business of parliament, does not conform to this fiction of opposing interests; for, it is the practice, and it is agreed by all politicians to be a right and constitutional practice, that the King's Ministers should be the proposers of every measure intended for the Conduct of

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Government; and we know, that no Ministry can hold their Office, (for the King will not continue them), if they do not possess such confidence in the two houses, as to be able in general, to carry every measure, they propose. The houses, therefore, are thus always engaged to propound to the King, his own measure. Where then are the opposing interests, where is the check, the balance, or counteraction? What sense is there in the reflection, that the King can only prevent a bad measure like Roman Tribunes, but not propose a good one? It is, therefore, on some other principle, than this, which has no existence, that the parliament is actuated, and performs its functions.

Our Commentator, however, thinks otherwise; for he goes on with a very laborious illustration, to impress still more his full persuasion, how much is brought about by this principle of checks, and counteraction. "The two houses," says he, "naturally drawing in two directions of opposite interest, and the prerogative in another, still different from them both, they mutually keep each other from exceeding their proper limits," in which, I think, it must be allowed, he has wholly exposed the futility of his hypothesis by pressing it too far. The obscure intimation about checks

checks, might have passed, like other things, that are between some meaning, and no meaning; but when he fully explains to us his meaning, by saying, that the Houses of Lords, and Commons "naturally draw in two directions "of opposite interests," we have something sufficiently plain to be capable of examination; and upon this we must pause a little, before we proceed any farther.

This direct opposition of interests between the Lords, and Commons, is, fortunately for us, nothing but a fabulous invention of our author; contrived, in order to round and finish more completely his mythological account of three co-equal, and co-ordinate Powers in the Legislature; for such co-ordination is implied by his whole system, though not, I confess, expressly so defined in words, as it has been by Mr. Wooddeson.

As to a natural opposition of interest between the Lords and Commons, I am utterly unable to discover any. On the contrary, I think, I see many ties of common feeling, and interest, that cannot fail of producing the beneficial effects of Union and Co-operation, which are so much more needed in national councils, than checks, and controuls. In the first place, they

are not separated by an insuperable barrier, the most likely of all other considerations to cause aversion and hostility; but many of the Lords have sat among the Commons; many of the Commons look to seats among the Lords, either by creation, or descent; and both houses contain in them kindred and relations, of the nearest sort. If they are so intimately connected in their persons, surely they are not less so in their concerns. What can be a matter of debate in either house, that is not equally interesting to the members of both? In a country, where the Law is the same for high, and for low, for those with titles, and those without, there does not seem a possibility of any great difference between the two houses in the debate of general Laws. In the measures for affecting property, surely, they are upon the same footing; Is it land, or money? is it for taxation, for inclosing, for canals, for trade? it would puzzle any one to point out, that the Lords, as Lords, have any distinct interest from the Commoners, upon these grand articles of Legislative discussion, and regulation,

And yet there is a difference between the two houses, which has its appropriate effect in Legislation, but neither the effect nor the cause are such as the Commentator has imagined. It
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is not an opposition of interests, or any effort in the nature of a check; but it is a distinctive character, a habit, and disposition of their own, that renders the respective bodies of the Legislature eminently useful, in addition the one to the other. Whether it is temper, or wisdom, or dignity, whatever it is, that produces it, we certainly find measures, that have passed the Commons, are debated differently, and differently disposed of by the Lords; and those who look on, are as contented with their decision, as with that of the Commons. The great question of the Slave Trade, which passed the Commons, still hangs in the House of Lords, and no one pretends to foresee its determination, either as to time or effect. No man ever ascribed this difference to any "natural opposition of interest," between the two houses. One reason alone, perhaps, is sufficient to account for it; it is a different set of persons pausing upon a national question, of experiment, involving large property, and highly affecting the trade of the country; a demonstration, in our own times, of the great utility resulting from two deliberative assemblies in the national Legislature.

Revision, and Reconsideration, then, constitute the principle, upon which the two houses act; it is by Union, and by Co-operating to mature

ture the best measures, after repeated deliberation, that our Legislature proceeds, and not by opposition of Interests, or by Checks; and the result is, to execute well, what has been well resolved; not the impracticability, and inaction, which the other supposition seems to threaten.

The Commentator goes on to say, "the whole is prevented from separation, and artificially connected together, by the mixed nature of the Crown, which is a part of the Legislative, and the sole Executive Magistrate." And having thus imagined a certain constitutional point of rest, produced by the antagonising efforts of the three opposing interests of King, Lords, and Commons, he subjoins an illustration of a different sort, where the three powers do not antagonise, but are supposed to move in different, yet crossing lines, so as to strike the machine of Government and impel it in a direction compounded of all the three.

In these illustrations, the author seems to make a little deviation; his subject was the parliament, consisting of King, Lords, and Commons; but in the first illustration from a point of rest, he speaks of "the whole civil polity,"
which

which must include the Executive also : again in the second, speaking of the three powers impelling the machine of Government, he must mean the Executive Government. Of these two, I confess I prefer the last ; I like the movement from the mechanical impulse, preferably to the state of inaction from the checks and opposing Interests ; but I think, it might have been better applied. The three visible substances of King, Lords, and Commons, impelling a metaphysical notion, namely, the machine of Government, does not give me a satisfactory illustration ; there is something in it more operative than necessary ; like the enraged bull butting the mundane Egg, in the Indian Mythology. The author was tied down by his system to suppose the King, Lords, and Commons acting together *in pari potestate*, in this exhibition. According to my notion, it might be better pictured in this manner. The Legislative advisers of the King on the one hand, and the Executive advisers of the King out of parliament, on the other, assisting the Supreme Power with their respective counsels, and ministration, and having a regard to each other in their respective counsels and advice, have the effect of giving to the Royal Authority a direction, composed of both, and which it would not receive from either singly ; and this direction

tion may very well be called, as it is ingeniously enough phrased by the Author, "the true line of the liberty and happiness of the Community."

In short, according to my observation, it appears that the whole of the King's Government is supported, and carried on by the ministration of his respective advisers, in, or out of Parliament upon principles of Conciliation, and Co-operation. These are the result of full examination and fair discussion, and constitute the National wisdom, combined in the Legislative, and Executive functions of the Supreme Power. If you look at the Parliament, you see the majority of both Houses are always friendly to the King's advisers out of Parliament; the measures proposed by them are entertained with candor, and if they have a probable appearance of being useful, the Houses, after debate, and amendment, agree to propound them in form to his Majesty, to be made by Him the Law of the Land. This is the usual proceeding, in matters, that concern the King, in every Session of Parliament; and let party men, and those who want distraction, and political warfare, say what they will, this must be the conduct of Parliament in all good times, the Government would otherwise be at a stand.

Will

Will any one say, that this is not the very form and function of a Council, or that the two Houses of Parliament, perform any other office in the State, than that of advisers to His Majesty, in the affairs of the Nation? are they not therefore, intimately, and necessarily, united with him, in practice, as well as in theory, in carrying on their portion of the Supreme Government; and is not the notion of opposing interests between them and the King inimical to the regular discharge of such duties? there have been times, when such opposing interests have been created, and suffered to have their operation; their fatal consequences are well known; after which, it is wonderful how men should indulge a speculation, which is never seen in practice, but in times of disorder, and public calamity; and does not promise in Theory any thing compatible with practicable Government.

Such are the observations, that occur to me upon this paragraph, which seems to be penned by the author with very great study; it certainly has been considered by many of his readers, as a very happy demonstration of political perfection; but I must say, that in my opinion the author and reader have been equally deceived. These fanciful reflections seem to be all suggested by the first misconception, of the King, Lords and Commons, acting in *pari gradu*,

in a sort of co-ordination. From such a false principle nothing sound, or instructive could be deduced. Yet this is to be lamented, for the subject demanded some exposition, and some sort of illustration; and any, be it what it might, could not fail of attracting the student. Unfortunately the imagery of this illustration is particularly striking, and is likely to remain in the mind, while juster reflections may lose their effect. The reader will allow me to make the attempt to supply the place of this paragraph with another, conceived upon my idea of the Supreme Power; in which I shall follow the original, retaining whatever appears suitable and just, even to the very machinery of his mechanical powers; making, however, such alterations, as will, I think, adapt them, to exhibit more plainly, what I consider as the real truth. I will place the paragraph from Blackstone in an opposite column to my own, and submit them both to the reader's judgment, to decide which of them contains the juster reflexions on the Constitution of our Government.

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BLACKSTONE'S

TEXT.

It is highly necessary for preserving the balance of the constitution, that the executive power should be a branch, though not the whole, of the legislature. The total union of them, we have seen, would be productive of tyranny; the total disjunction of them, for the present, would in the end produce the same effects, by causing that union against which it seems to provide. The legislature would soon become tyrannical, by making continual encroachments, and gradually assuming to itself the rights of the executive power.

Thus the long parliament of Charles the first, while it acted in a constitutional manner, with the royal

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BLACKSTONE'S

TEXT CORRECTED.

From the circumstance of the Legislative, and Executive Power being both placed in the King, there results an advantage in the practice, which seems hardly to be expected from the theory of such a Government; for the exercise of them is deposited with his separate advisers, and ministers; which prevents the tyranny that would be produced by a total Union of them in practice, as well as theory, in the same hands; but if the King is taken away, the Legislative would be seen to gain an ascendancy over, and to draw to itself the Executive, and so become the intire Supreme Power of the State.

Thus the long Parliament of Charles first, while it acted in a Constitutional manner, under the authority of the King

concurrence, redressed many heavy grievances and established many salutary laws. But when the two houses assumed the power of legislation, in exclusion of the royal authority, they soon after assumed likewise the reins of administration; and in consequence of these united powers, overturned both church and state, and established a worse oppression than any they pretended to remedy.

To hinder therefore any such encroachments, the king is himself a part of the parliament: and, as this is the reason of his being so, very properly therefore the share of legislation, which the constitution has placed in the crown, consists in the power of *rejecting*, rather than *resolving*; this being sufficient to answer the end proposed.

King, redressed many heavy grievances, and established many salutary Laws; but when the two houses assumed the power of making Laws, in exclusion of the Royal authority, they assumed likewise the reins of the Executive Administration; and in consequence of these united powers, overturned both Church and State, and established a worse oppression, than any they pretended to remedy.

Fortunately for us, therefore, the King, by being at the head of both departments of Government, is able to hinder any such encroachments. It is no less proper, that the share in Legislation, which by the Constitution is placed in the Crown, consists in the power of *assenting* or *rejecting*, rather than in that of *propounding*, and *deliberating*; this being sufficient to answer every end of Sovereignty that could be proposed.

For

Nor

For we may apply to the royal negative in this instance, what Cicero observes of the negative of the Roman tribunes, that the crown has not any power of *doing* wrong, but merely of *preventing* wrong from being done.

Nor does it seem, the Sovereign Power can exercise its authority in any other mode. In like manner, the Roman People under the Republic, in the exercise of their Sovereignty, simply commanded, or rejected the Laws propounded to them, by the Magistrates, without deliberation, exactly as a King of England now does. The King, therefore, has the power not only to prevent evil, but from him is derived every thing, that is good, in Legislation, first, through the wisdom of his Legislative counsellors and advisers, and lastly by his own personal Enactment.

The crown cannot begin of itself any alterations in the present established law; but it may approve or disapprove of the alterations suggested and consented to by the two houses. The legislative therefore,

The King cannot in person begin any alterations in the present established law; but he may approve, or disapprove of the alterations suggested and consented to by the two houses. The Legislative

fore cannot abridge the executive power of any rights which it now has by law, without it's own consent; since the law must perpetually stand as it now does, unless all the powers will agree to alter it.

And herein indeed consists the true excellence of the English government, that all the parts of it form a mutual check upon each other. In the legislature, the people are a check upon the nobility, and the nobility a check upon the people, by the mutual privilege of rejecting what the other has resolved; while the king is a check upon both, which preserves the executive power from encroachments.

And this very executive power is again checked, and kept within due bounds by

gislative advisers therefore cannot abridge the Supreme Power of any rights, which it now has by law, without its own consent, since the law must perpetually stand, as it now does, unless he will agree to any bill for altering it.

And herein indeed, consists the True Excellence of this department of the English Government; that all the parts of it must agree, and concur in the same sentiments, and the same measure. The people must concur, and agree with the nobility; the nobility must concur, and agree with the people, by the mutual privilege of rejecting, what the other has resolved; While the King must agree and concur with both.

And this very Supreme Power again may be said to be limited by the two Houses, thro'

by the two houses, through the privilege they have of enquiring into, impeaching, and punishing the conduct (not indeed of the king, which would destroy his constitutional independence; but, which is more beneficial to the public) of his evil and pernicious counsellors.

thro' the authority they have of inquiring into, impeaching, and punishing the conduct of evil and pernicious ministers of his Executive Power; in which case, the advisers of the King in Parliament, have a sort of jurisdiction over his advisers out of Parliament; and on the other hand his advisers out of Parliament may recommend to his Majesty to dissolve the Parliament, whenever it shall seem to them expedient, and proper.

Thus every branch of our civil polity supports and is supported, regulates and is regulated, by the rest: for the two houses naturally drawing in two directions of opposite interests, and the prerogative in another still different from them both, they mutually keep each other from exceeding their proper limits; while the whole is prevented from separation

Thus is there a Co-operation, produced between the distinct, and separate functions of those, who bear authority under the King whether in, or out of Parliament, each acting upon principles, which are recognised not only by themselves, but by those, whose Constitutional approbation must, at first, or last, be obtained; while the whole

paration, and artificially connected together by the mixed nature of the crown, which is a part of the legislative, and the sole executive magistrate.

whole is prevented from separation, and artificially connected by the Sovereign power of the Crown, which is Supreme over all.

Neither of the houses of Parliament would probably give the same advice separately, as is given in bills, or votes, which have the concurrence of both; nor would, perhaps, the officers of the Executive department out of Parliament advise the same measures, which they now do, with the knowledge, that what they advise, and execute, is subject to be reviewed in Parliament; and both houses know, that, if they are dissolved, it will be upon the advice of those very ministers.

Like three distinct powers in mechanics, they jointly impel the machine of government in a direction different from what either

The movements, therefore, of the Supreme Power, which actuates our whole Civil Polity, are the result of an impulse from these

either, acting by itself, would have done; but at the same time in a direction, which constitutes the true line of the liberty and happiness of the community.

these different forces, which may be said jointly to impel it, in a direction different from what either, acting by itself, would have done; but, at the same time, in a direction partaking of each, and formed out of all: — a direction which constitutes the true line of the liberty and happiness of the community.

Whether these are precisely the reflexions, that should be submitted to the readers consideration, in this particular place, I do not pretend to say; I only meant to run a parallel with the reflexions of the Commentator, and point what he has said, in such a manner, as to make it conform with what appears to me to be the true and only principles, upon which our Government performs its operations, whether Legislative, or Executive.

One article in these reflexions, seems to me, to be futile, in the present usage of Parliaments, and in the practice of the present times; I mean what relates to the King's power of rejecting a bill agreed to by both Houses. This case is not very likely to happen; because the

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majority of each House usually support the King's Ministers, and, therefore, will propound no measure to the King, but what those Ministers will advise him, to approve; and if the majority ever happen to be against them, they will rather advise the King, to dissolve the Parliament, and so prevent all necessity of advising him to reject an unpalatable bill. This practice of predisposing the Parliament to a unity of sentiment with the King's Ministers, seems to render all reasoning upon the King's *Veto*, as it is called, a mere moot point, and without any real application. Considered as a power, the King, no doubt, possesses it, in this, as well as in every other instance, where his advisers propose any measure to him, which he does not approve. The only ground, as it seems to me, on which such power can be called in question, is this; that the two Houses are his proper advisers, assigned him by the Constitution, in matters of Legislation; to reject, therefore, their advice, in consequence of suggestions from advisers, whose functions are in another department, may in some men's minds, look like deviating from the line of limitation prescribed by the Constitution; and may be thought to be governing by arbitrary power, and to have a tendency towards deranging the legal course of the Government. But there seems in history, a direct admission both by
Lords

Lords and Commons, that the King may Constitutionally act upon such extra Parliamentary advice, in rejecting a Parliamentary measure proposed to him; for the Lords and Commons in the time of William the third, as we have before seen^a, on such an occasion did not presume to urge more than an expression of sorrow, that the King preferred the advice of others, to that of his Parliament. I should take this for the highest authority on that point, and when it is tried by analogy, and principle, it seems to be perfectly sound. For though the King cannot govern his Exchequer, or transact his money affairs, as I conceive, but by his Treasury; nor direct his Navy but by the Admiralty, any more than he can make laws, but by means of the Lords, and Commons in his Parliament; yet when it is a mere question of *not* doing any thing, He may, surely, be guided by his Admiralty Board, if he chuses, in rejecting a measure of finance proposed by his Treasury: and by his Treasury, in like manner, respecting his Navy; and I do not see, why he may not be advised by either of those, or, what is more fitting, by his Privy Council, (by whose advice he always calls his Parliament) to reject any particular measure proposed by the Parliament, which has thus been called with their advice.

^a Letter II. page 26.

We cannot but remark, that the Commentator, who saw so plainly a supposed natural opposition of interest, between the two Houses, should not perceive two opposing interests constantly subsisting, and at work in the body of each House ! but this is precisely the method of system-makers; they go to the clouds for imaginary forms, without condescending to look at the realities, that are under their feet. This division in each House has a very singular consequence; for it actually causes a Union between the two Houses. The majority and minority in each being always in the same sentiments, the two Houses of Parliament are thus assimilated as perfectly as two bodies of men can well be. Again the design of the majority in this Union, being to support the King's Ministers in all Government questions, the two Houses may be said to be as much assimilated to the King, as they are to each other. Further, the King, who has personally no other power, than that of rejecting, and approving, has, through his Ministers, the power of commencing measures, and submitting them to deliberation. Thus do we see, that every point made in the Vinerian theory of Parliament, and every speculation founded upon it, is controuled by practice; it is all hypothesis; and as unfounded in fact, as it is unsound in principle.

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In all these conceits about the Constitution of Parliament, it is wholly forgotten, that the Lords and Commons are the King's Council; and yet, when it is examined, it is only upon the idea of a Council, that they perform all their functions. The King calls them to Parliament by the advice of his Privy Council; he opens to them the affairs, on which they are to deliberate; those affairs are first agreed upon by his advisers out of Parliament, who introduce them into one, or other of the Houses, for discussion, and determination; and there they exert all their abilities and influence to bring them to a prosperous issue, in which they rarely fail. The King's advisers out of Parliament seem, as it were, to adjourn^a into Parliament certain matters, that cannot legally be concluded, but in that place, and by that authority; they meet there indeed with some persons, who, (upon principles of the Constitution, not noticed, much less explained by our Commentator) are constantly in an "opposing interest," and make "a check" to the progress of their measures; but these gentlemen are over-ruled by

a I use the term "adjourn," because it is as antient as the rolls of Parliament, where we see divers matters adjourned, and referred from the King in Council to Parliament, for solemn hearing, and decision there. Our modern practice does not differ from the antient so much as some people may think. See Letter II. page 187.

the majority; who, knowing their situation of counsellors, and advisers to the King, give an honest support to the measures of Government, when they see them proposed upon probable grounds of sound policy. This co-operation of the Parliament with the King's ministers contributes to assimilate the Legislative and the Executive powers, in a manner, that is totally inconsistent with the Vinerian theory. This theory supposes them in constant jealousy, and ready to rush into contention and conflict; in fact it is quite otherwise; the Executive advisers of the Crown have, from various causes, an ascendancy among its Legislative advisers; and readily obtain their aid, as often as they apply for it. Both branches of counsellors, in their respective stations, unite, in general, in forwarding the King's business, which is the business of the Nation. This good understanding and correspondence is a fact not to be questioned; every one knows, it is so; and such is the good sense and integrity among public men, of all descriptions, that I am satisfied, it would not be so in fact, if it ought not to be so in reason.

This intimate relation, and intercourse between the Executive and Legislative advisers, has not had a due regard in the reasonings of Theorists on our constitution; these have rather
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indulged in Speculations of warfare, than amity; they have preferred, what would separate, not what would bring them together. They have not considered, that the Legislative receives its tone, its character, and its disposition from the Executive; that the most active persons in the former, are those, who hold offices, or wish to hold them in the latter; and that the personal considerations of these possessors and claimants, in some way or other, are mixed in most parliamentary discussions; so that many collateral matters hang upon the decision of the direct point in debate. After this has been discerned distinctly, it looks more like complaisance, than truth, to ascribe so decisively to the Legislative any superiority over the Executive in the scale of political power, or consequence, as some writers affect to do, upon which I have before made some remarks.^a

I have been heretofore censured for delineating a Constitution, that has had no existence since the days of James the first^b; what I have just sketched may, perhaps, on the other hand be censured as too modern; the critics may, amongst them, blot out both ancient and modern traits; I shall stand behind my picture and laugh at them. I have now shewn, that my

a Letter II. page, 82.

b Letter II. page, 69.

theory of Government is supported, as I said from the beginning, not only by antient but by modern usage, and that it conforms as truly to what passes in the present session of Parliament, as to any session in the reign of Henry the eighth; but the Vinerian Constitution never had any existence in this country, or in any other; nor could ever, as I think, be carried into practice.

In the begining of this criticism upon Blackstone, I observed, that he considered the Royal authority in no other light, than to be "limited and "diminished;" this, however, is only discernable, where he has to contrast it with the Parliament, to which, according to his notion of the Supreme Power, he always gives a priority, in a different manner, and upon other considerations, than what appear to me to be just and true. But in the chapter upon Prerogative, where he has to enumerate the various branches of power, that go to compose the Royal authority, he detracts nothing, as I perceive, from the just, and legal Sovereignty of the State. This makes the inconsistency of his system; which confers such pre-eminence and splendor on the King out of Parliament, and reduces him to the condition of *Unus inter alios*, in Parliament; contrary to the declaration of Lord Coke, (as has been noticed before) who

^a See Letter II,

says,

says, the King is never in such high dignity, as when surrounded by the Lords and Commons in his Parliament. I have some observations however to make even upon this chapter; and first of its title.

It is a misuse of the word Prerogative, to apply it to the whole of the Royal authority; for it properly signifies only a part; and as it signifies that part which trenches sometimes upon private rights, the application of it has always been invidious; the thing has been viewed with Jealousy, and the name has in most times been unpopular. But the Royal authority is always revered, and cherished, while the Prerogative is in discredit; and why give a name, which is wanting both in propriety, and favor, when another may be had,] which has the advantage in both!

Prerogative is quaintly but significantly and aptly defined by Sir Henry Finch, to be "that Law, in case of the King, which is Law in "no case of the subject" now to make such definition applicable, there must be some case, where the interest of the King, and that of a subject come into contact, and competition, so as that the King may have the benefit of that peculiar and distinct rule of Law, which is denominated prerogative. To apply it to the exercise of Sovereign authority, which is a case that

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never can happen to a subject, is quite wide from the above definition, and plainly improper. Prerogative is a certain special indulgence to a particular person, and (however contradictory it may seem) is in truth, the same as privilege, and so they are used indifferently among Civilians; the latter implying a particular species of Law indulged to some particular person, or place; the former implying the preference, and distinction enjoyed by such indulgence; being two views of the same thing.

Our old lawyers understood Prerogative in this sense: the Statute *de Prerogativa Regis* in the time of Edward second, contains only such rights of the King, as are in the nature of private rights; but nothing at all of the Sovereign authority. The title Prerogative in Fitzherbert, and Brooke, is confined to such inferior matters. If you run over the title, Prerogative, in the index to Plowden, you will perceive it confined to the same sort of matter. Blackstone was well aware of this particular sense of Prerogative; and he has accordingly divided Prerogatives into "direct," and "incidental;" under the first, he classes all those rights of Sovereignty, which, I submit, are not properly Prerogatives; under the latter he reckons what, I contend, are alone to be so denominated. He gives us several instances of such latter Prerogatives; as that no costs shall be recovered against the
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King; the King cannot be a joint tenant; (to which he should have added, that, in such case, he would take the whole estate in severalty, for it would not otherwise, be a beneficial piece of prerogative,) and that the King's debt shall be preferred before that of a subject: which instances, without adding others, are sufficient to shew the nature of, what may be called, petty private advantages, when compared with the rights of the Sovereign power, in the exercise of Royal authority.

Sir Henry Finch, whose definition of Prerogative has just been cited, wrote his Discourse of the Law, in a very particular method; he goes through the whole Law of private Rights, by stating under each head, first the Common Law, then the Statutes made to alter it, and lastly, the Prerogative, or King's right respecting the article in question; so that, he exhibits under every head, how that particular stands with regard to the King, as well as with regard to the subject. This is a sort of comparison, not made, by any other writer, that I have seen; and it very naturally suggested to him the above definition of the Prerogative, namely "that Law in the case of the King, which is Law is no case of the subject." But it was incorrect in Blackstone, to apply, as he has, to the whole Royal Authority this definition, which from the particular wording of it, as

well as from the particular use made of it by its author, was intended only for the confined branch of Prerogative, just described.

This mistake of Finch's definition is an impropriety, that is, however, far exceeded by a deference, he shews in another passage to Mr. Locke, who is not, in my opinion, a fit author for lawyers to quote, and he never fails of leading them into mistakes. Blackstone's words are these. "For Prerogative consisting (as "Mr, Locke has well defined it) in the discretionary power of acting for the public "good, where the positive laws are silent, if "that discretionary power be abused to the "public detriment, such prerogative is exerted "in an unconstitutional manner^a." I do not turn to Locke to see, whether the quotation is correct; for I am criticising Blackstone, who has made it his own by adoption; such unjuridical writers as Locke, are not worth a lawyer's criticism. That there are instances, in which the King may, and ought to act, for the good of the people, not only where the positive laws are silent, but even where they are against such exercise of authority, we all know; but these are very rare cases indeed; and how Blackstone should be brought to think, that a definition of such singular instances of Prerogative, is a good definition of Prerogative in general,

^a Chapter, Prerogative,

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which he had just been shewing is clearly allowed by many positive laws, is not to be accounted for but by the indolent confidence which he, as well as others, has too often reposed in such a writer as Mr. Locke.

I shall not, for the present, make any further comment upon Blackstone; to treat this subject as it deserves, would require a volume, which is more labour, than I am just now inclined to bestow upon such a pursuit. I leave the Vine-rian Theorists to digest my remarks upon their fine-spun speculations; and to reconsider, if they have so much love of truth, all they have taught, or learnt upon the Constitution of our Government, particularly of that part of it, which belongs to the Parliament. They have now an opportunity of renewing their contemplations with peculiar advantage; The Union with Ireland will give origin to a newly constituted Parliament, where every thing is untried, and there will be much to hope, and something to fear. Let them furbish up their "balances" and re-adjust their "checks;" they may now, if they please, proceed, *secundum artem*, to cast the Nativity of this New Assembly, without any one being able to contradict their Hypothesis, at least for several months; for we are all equally ignorant, both of the "mechanical," and moral qualities of this Imperial Parliament; they exist only in speculation.

I recommend to these gentlemen, to consider, whether the "opposing Interests", they so shrewdly discerned between the Lords and Commons, in the present form of Parliament, are likely to subsist between the Lords and Commons, that are to come over from Ireland; and what answer is to be given to those unscientific observers, who think, that these adopted Lords and Gentlemen, are likely to be in the very same Interest, and to be actuated by the very same views and dispositions. They should more especially take into consideration, what is to be said to those, who entertain the gross idea, that, if the whole of the Irish parliament, sitting in Ireland, was generally in unison with the Executive Government of the Crown, there ought to be no doubt, whether a portion of that body mixt with the British Parliament sitting at Westminster, will be equally so. Such speculations on the New Parliament, may awhile console the CONSTITUTIONAL LAWYERS of the Vinerian School, for the disturbance I have given to their system about the old one; and while they are so usefully employed, I take my leave of them with pleasure.

January 20, 1800.

POSTSCRIPT.

February 24, 1800.

When I thought, I might breathe a little from a controversy, that, according to my persuasion, contained nothing in it on my side, to be controverted, there was put into my hand **THE CRITICAL REVIEW** for this month; a periodical work, which was once a respectable appendage to the Literature of the Country; but which of late, especially since it has been under its present controul, has allied itself more closely to Politics, and those of the worst stamp. In this work, there is a Review of my Second and Third Letters, and of Mr. Wooddeson's Pamphlet; which I cannot pass over, without a little animadversion. I do not mean to complain of a Critic's opinion, when given fairly, after an actual examination; we must all judge according

according to our faculty; and if a Reviewer has neither taste, or judgement, it is the fault of none but his employer; I shall not complain of such invincible disabilities, as these: My complaint is this, that instead of a fair examination, and critique, upon what I have urged, either in point of authority, or argument, the Reviewer has given his reader nothing but gross misrepresentations, and he appears not even to have read, what he pretends to pass a judgement upon.

And here I am sorry again to recur to my friend Mr. Wooddeson; but this Reviewer seems to make common cause with Him, urging the same charges, repeating without scruple what I had already answered, and proceeding in the very spirit and temper of Mr. W's publication. There is, I must confess, this gradation between them, suitable to their different situations; Mr. W. contented himself with insinuating, what this writer alleges in plain terms.

This shameless writer charges me with insinuating, "that, as in all pleadings the two Houses of Parliament are called the King's Parliament, the Parliament depends upon the King; is his creature, and is at his disposal." Now, I deny that there is any such nonsense in
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my writings, either expressed, or implied. But, on the other hand, there is such an inference drawn by Mr. W. and imputed to me as my meaning, which inference I have ascribed to his ignorance of the nature of Monarchy, and I have strongly censured him for such a gross conception, as may be seen very fully in the Third Letter, page 40.

The Reviewer makes some other unfounded charges against me, in the following words. " Our author endeavours to prove, that the " English government is a simple monarchy; " that the monarch creates the two houses of " parliament; that the people, destitute of any " claim to sovereignty, appoint no part of the " legislature; that the King might, as some " Kings have done in this country, rule without any parliament, and yet violate no law; " finally that the King is at once, and solely, " the maker and executor of the laws." Now, in this paragraph, I aver, there are more falsehoods than there are sentences; there is hardly a member of a sentence, hardly a combination of noun and verb, that does not convey a gross untruth. Is this a want of intellect or a want of honesty? Can this man comprehend the English language! I challenge him to shew a proposition in my writings to warrant such

foolish imputations; on the contrary, the whole tenor of my argument is against such absurdities. This every one must know, who has read my 2d and 3d Letters; it may at once be seen in the 2d 11th and 13th Propositions, and in page 89, and 182 of the second letter, not to refer to many other passages, which might be cited to this purpose. I cannot help remarking the want of accuracy in one particular; for he charges me with stating the King to be the "sole executor of the laws," when I have, over and over, censured Blackstone for using so improper an expression; as may be seen in the second letter, page 182; and in several places in the third letter.

However, if he was determined to write against me, instead of Reviewing me, he had no other way of proceeding than this; it now appears, from two experiments, that there is no way of writing against me, with any semblance of success, but by the suppression of Truth, or the fabrication of Falsehood. Mr. W. unfortunately for him, tried the first; his wretched follower, the Reviewer has tried the latter. They have both stepped out of their proper character; the one has made himself too much of the advocate, the other too much of

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the politician, to discharge their respective duties, as they ought.

I wanted not the example of such feeble assaults, to know how invulnerable these writings are. Men may dislike them according to their judgment, or no judgment; according to their prejudices, their ignorance, or their wishes; but this I know full well, **THERE IS NOT THE MAN EXISTING, WHO CAN CONFUTE THEM.** There is neither law-man, nor lay-man; neither antiquary, or scholar, who can confute the main positions in these writings; and I do hereby challenge to the trial, any and every individual of the above descriptions.

I am thus bold, because I know the sources, to which all such inquirers must go, and that they will find nothing, but what makes for me; it is a confidence, that belongs to Truth, a confidence in my authorities, and not in myself; though I will not distrust the light of my own understanding, as long as Heaven allows me the use of it. Knowing, and feeling, as I have just expressed, I own, it moves my spleen to be assailed with the arts of suppression, of falsification, and of insinuation, so unworthy of the argument, and of the manner in which, I trust,
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it has been conducted by me. In this, I feel some considerations, that go much beyond my own particular situation; I mean the interests of learning, and literature, which, I think, shamefully degraded by such abuse of them,

Ignorance and ill manners commonly go together; this man has, with uncommon assurance, called MR. REEVES the writer of these letters, as familiarly as if his name was in the title page; and he undertakes to know, that Mr. REEVES likes the constitution, because he possesses "some sinecures, and looks for more." What has this to do with the business in hand! and what, if both suppositions should be shewn to be as false, as all his other charges! But this is called Reviewing, and thus it is that the Town is insulted by Republican Reviewers. When there is any critique to be made on political works, instead of stating the opinions of the author, they pester the reader with their own; all that is not misrepresentation of the book, is personal abuse upon the author, or editor; and the whole is a string of scurrility, lies, and impotence. Such is the sentence I am compelled to pass upon this shallow Reviewer, with whom I shall give myself no further trouble, but deliver him over to the secular arm of the ANTI-JACO-

IN REVIEW and MAGAZINE; which is the only publication, that has had the courage to "review the Reviewers," and afford some appeal from the ignorance and malice, that reign in the MONTHLY and CRITICAL REVIEWS.

I cannot close this letter, without congratulating Mr. Wooddeson, on his finding the sort of support, I had predicted, he would have from those, who harbour any malignant, or unfriendly thoughts towards our constitution, in Church or State. The Critical Review has already declared for him; G. G. and I. ROBINSONS, or whoever, or whatever manner of man it is (of the class which dissents from every thing established) that they employ, or permit, to write down works in favor of Kingly government, and write up those that degrade it, maintains in print (and it will go down to posterity) that Mr. W's. is a "solid" performance "and" "will convince every One, of my errors." This must be a great encouragement to him, and when to this is added the testimony of THE MONTHLY REVIEW, (of which I may venture to assure him, without much fear of disappointment) he will be set up, in print at least, as high as he can reasonably wish. With such aid from the disaffected, and with the voices of all those

those, who know, or care very little about the matter, (who will not the less, for that reason, take a side, and are more likely to take his than mine) he may feel very strong, and give himself no trouble, about the judicious, and well informed persons, who join in condemning his unnecessary "Vindication of the British Legislature." which none of them can think, has been either attacked by me, or defended by him.

FINIS.



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